

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 569

Introduced by Assembly Member Emmerson

February 25, 2009

An act to amend Section 512 of, and to add Section 512.7 to, the An act to amend Section 512 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 569, as amended, Emmerson. Meal periods: exemptions.

Existing law prohibits, subject to certain exceptions, an employer from requiring an employee to work more than 5 hours per day without providing a meal period *and, notwithstanding that provision, authorizes the Industrial Welfare Commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the order is consistent with the health and welfare of affected employees.*

This bill would exempt from ~~this prohibition~~ *these provisions* construction employees *and commercial drivers in the transportation industry* who are covered by a valid collective bargaining agreement containing specified terms, ~~and would instead apply the~~ *including* meal period provisions of that agreement to their employment. ~~The bill would also permit parties in the transportation industry, under a valid collective bargaining agreement, to establish an off-duty meal period that commences after not more than 6 hours of work and the circumstances for on-duty meals by commercial drivers, if the collective bargaining agreement also provides for a premium rate for overtime hours and a specified regular hourly rate and It would specify that its provisions~~

~~pertaining to the transportation industry~~ do not affect the requirements for meal periods for employees *or employers in industries* other than commercial drivers in that industry subject to a collective bargaining agreement *those described in the bill*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 512 of the Labor Code is amended to
2 read:
3 512. (a) An employer may not employ an employee for a work
4 period of more than five hours per day without providing the
5 employee with a meal period of not less than 30 minutes, except
6 that if the total work period per day of the employee is no more
7 than six hours, the meal period may be waived by mutual consent
8 of both the employer and employee. An employer may not employ
9 an employee for a work period of more than 10 hours per day
10 without providing the employee with a second meal period of not
11 less than 30 minutes, except that if the total hours worked is no
12 more than 12 hours, the second meal period may be waived by
13 mutual consent of the employer and the employee only if the first
14 meal period was not waived.
15 (b) Notwithstanding subdivision (a), the Industrial Welfare
16 Commission may adopt a working condition order permitting a
17 meal period to commence after six hours of work if the commission
18 determines that the order is consistent with the health and welfare
19 of the affected employees.
20 (c) Subdivision (a) does not apply to an employee in the
21 wholesale baking industry who is subject to an Industrial Welfare
22 Commission wage order and who is covered by a valid collective
23 bargaining agreement that provides for a 35-hour workweek
24 consisting of five 7-hour days, payment of one and one-half times
25 the regular rate of pay for time worked in excess of seven hours
26 per day, and a rest period of not less than 10 minutes every two
27 hours.
28 (d) If an employee in the motion picture industry or the
29 broadcasting industry, as those industries are defined in Industrial
30 Welfare Commission Wage Order Numbers 11 and 12, is covered
31 by a valid collective bargaining agreement that provides for meal

1 periods and includes a monetary remedy if the employee does not
2 receive a meal period required by the agreement, then the terms,
3 conditions, and remedies of the agreement pertaining to meal
4 periods apply in lieu of the applicable provisions pertaining to
5 meal periods of subdivision (a) of this section, Section 226.7, and
6 Industrial Welfare Commission Wage Order Numbers 11 and 12.

7 ~~(e) If an employee in a construction occupation, as defined in~~
8 ~~Industrial Welfare Commission Wage Order Number 16, is covered~~
9 ~~by a valid collective bargaining agreement that regulates off-duty~~
10 ~~and on-duty meal periods and includes a monetary remedy if the~~
11 ~~employee does not receive a meal period required by the agreement,~~
12 ~~then the terms, conditions, and remedies of the agreement~~
13 ~~pertaining to meal periods apply in lieu of the applicable provisions~~
14 ~~pertaining to meal periods of subdivision (a) of this section, Section~~
15 ~~226.7, and Industrial Welfare Commission Wage Order Number~~
16 ~~16.~~

17 *(e) Subdivisions (a) and (b) do not apply to an employee*
18 *employed in the construction industry or to an employee employed*
19 *as a commercial driver in the transportation industry if both of*
20 *the following conditions are satisfied:*

21 *(1) The employee is covered by a valid collective bargaining*
22 *agreement.*

23 *(2) The valid collective bargaining agreement expressly provides*
24 *for the wages, hours of work, and working conditions of employees,*
25 *and expressly provides for meal periods for those employees, final*
26 *and binding arbitration of disputes concerning application of its*
27 *meal period provisions, premium wage rates for all overtime hours*
28 *worked, and a regular hourly rate of pay of not less than 30 percent*
29 *more than the state minimum wage rate.*

30 ~~SEC. 2.— Section 512.7 is added to the Labor Code, to read:~~

31 ~~512.7.— (a) In the transportation industry, the parties to a valid~~
32 ~~collective bargaining agreement covering commercial drivers may~~
33 ~~establish, by the express terms of that agreement, the following:~~

34 ~~(1) An off-duty meal period that commences after not more than~~
35 ~~six hours of work.~~

36 ~~(2) The circumstances under which commercial drivers may~~
37 ~~qualify for an on-duty meal period.~~

38 ~~(b) Except as to terms that the parties establish pursuant to~~
39 ~~subdivision (a), employers in the transportation industry shall~~
40 ~~provide off-duty and on-duty meal periods in accordance with~~

1 ~~Section 512 and the applicable provisions of Wage Order Number~~
2 ~~9 of the Industrial Welfare Commission.~~

3 ~~(e) This section applies only if the collective bargaining~~
4 ~~agreement covering commercial drivers provides for premium~~
5 ~~wage rates for all overtime hours worked and a regular hourly rate~~
6 ~~of pay for commercial drivers that is at least 30 percent higher~~
7 ~~than the state minimum wage.~~

8 ~~SEC. 3.~~

9 *SEC. 2.* Notwithstanding any other provision of law, ~~Section~~
10 ~~512.7 subdivision (e) of Section 512~~ of the Labor Code does not
11 affect the nature or scope of the law related to meal periods,
12 including the timing of commencement of a meal period, for
13 employees or employers not specifically covered by ~~Section 512.7~~
14 *subdivision (e) of Section 512 of the Labor Code.*